

NOVEMBER 2, 2007

MICHAEL W. DOBBINS

CLERK U.S. DISTRICT COURT

3005983-LRB/JCN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

07 C 6223

TAMMY A. ROBERTS,

Plaintiff,

v.

No.

CEM

CALUM MACDONALD, Individually
and as agent of WESTERN EXPRESS,
INC., a foreign corporation,
and WESTERN EXPRESS, INC.,
a foreign corporation,

Defendants.

**JUDGE DARRAH
MAGISTRATE JUDGE SCHENKIER**

NOTICE OF REMOVAL

NOW COME the Defendants, WESTERN EXPRESS, INC., a corporation, and CALUM MACDONALD, by their attorneys, LEW R.C. BRICKER, JOHN C. NEEL and SMITHAMUNDSEN LLC, and pursuant to 28 USC §§ 1332, 1441 and 1446, remove this action to the United States District Court for the Northern District of Illinois, Eastern Division, and in support thereof, state as follows:

1. The movants' Notice of Removal is based upon subject matter jurisdiction conferred by diversity of citizenship, as established in 28 U.S.C. § 1332.
2. Upon information and belief, the named plaintiff is currently a and was at the time of the subject accident a citizen and resident of the State of Illinois. (See the Illinois Traffic Crash Report attached as Exhibit "A" and Affidavit of John C. Neel attached as Exhibit "B").
3. The defendant, CALUM MACDONALD is a resident of the State of Tennessee and a citizen of Scotland. (See Affidavit of Calum MacDonald attached as Exhibit "C"). At the time of

the occurrence that serves as the basis of the plaintiff's lawsuit, Mr. MacDonald was a resident and citizen of the State of Tennessee. (Exhibit "A" and Exhibit "C").

4. The defendant, WESTERN EXPRESS, INC., is a Tennessee corporation, has its principal place of business in Tennessee, and has maintained its principal place of business in Tennessee at all relevant times, both today and at the time of the occurrence that serves as the basis of the plaintiff's lawsuit. (See Affidavit of Ron Lowell attached as Exhibit "D" and Tennessee Secretary of State Business Information Search attached as Exhibit "E").

5. This matter arises out of a motor vehicle collision between a tractor trailer and a passenger vehicle occurring on westbound I-90 in Chicago, Cook County, Illinois. The plaintiff, TAMMY A. ROBERTS, filed a Complaint in the Cook County Circuit Court in the civil action styled Tammy A. Roberts v. Calum MacDonald, Individually and as agent of Western Express, Inc., a foreign corporation and Western Express, Inc., a foreign corporation, bearing Cook County, Illinois, Case No. 2007 L 010348 (The Complaint is attached as Exhibit "F").¹

6. The Complaint alleges that plaintiff was bodily injured, both internally and externally, has suffered and will in the future suffer pain, has been permanently scarred and disabled, has become obligated for large sums of money for medical care and in the future will become obligated for large sums of money for medical care, has lost money that she otherwise would have earned and has an impaired earning capacity. Further, plaintiff's attorney has informed defendants' attorneys that plaintiff sustained a lip laceration with nerve damage, that she has been diagnosed with TMJ syndrome, and that the amount in controversy exceeds the jurisdictional minimum for removal to federal court. (Exhibit "B" at Paragraphs 6-7). Given the nature of these allegations, the movants believe in good faith the amount in controversy exceeds the jurisdictional

¹ Pursuant to 28 U.S.C., § 1446 (a), defendants have attached as Group Exhibit "G", a copy of the plaintiff's Complaint, Summons, and all other pleadings served upon the movants as of the date of this Notice.

amount of \$75,000.00, exclusive of interest and costs.

7. There is complete diversity of citizenship between the plaintiff and the defendants.

8. The Complaint was filed on October 2, 2007. (Exhibit "F"). WESTERN EXPRESS, INC. was served via certified mail on October 5, 2007. (The proof of service is attached as Group Exhibit "G"). CALUM MACDONALD was served via certified mail on October 11, 2007. (The proof of service is attached as Group Exhibit "G").

9. With the first service upon a defendant occurring on October 5, 2007, this Notice was filed within (30) thirty days of "the receipt by the Defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." 28 U.S.C. § 1446(b).

10. 28 U.S.C. § 1446(a) requires that all defendants join the petition for removal or to consent to the removal. *See Northern Illinois Gas Co. v. Airco Industrial Gases*, 676 F.2d 270, 272 (7th Cir. 1982). The only defendants to this action, MACDONALD and WESTERN EXPRESS, INC., are the parties bringing, and in turn, joining this motion.

11. As required by 28 U.S.C. § 1446 (d), the movants will promptly serve upon plaintiff's counsel and file with the Cook County Circuit Court a true and correct copy of this Notice.

12. By removing this action, the defendants do not waive any defenses available to them.

13. If any question arises as to the propriety of the removal of this action, the movants request the opportunity to present a brief and oral argument in support of their position that this case is removable.

14. This Notice is signed and in compliance with Rule 11 of the Federal Rules of Civil

Procedure.

WHEREFORE, defendants, WESTERN EXPRESS, INC. and CALUM MACDONALD., pray that this Honorable Court retain jurisdiction of the matter pursuant to 28 U.S.C., §§ 1332, 1441, and 1446.

Respectfully Submitted

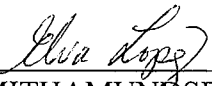
SMITHAMUNDSEN LLC

By: S/ Lew R. C. Bricker
Lew R. C. Bricker

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of **November, 2007** service of a true and complete copy of the above and foregoing pleading or paper was made upon all counsel of record by depositing the same in the United States mail, first-class postage prepaid, in envelopes properly addressed to each of them.



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